

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **200927006**

Release Date: 7/2/2009

Index Number: 1362.04-00

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-125364-07

Date:

March 24, 2009

X =

State =

D1 =

D2 =

Trust 1 =

Trust 2 =

Trust 3 =

Dear :

This responds to a letter dated May 18, 2007, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting inadvertent invalid election relief pursuant to § 1362(f) of the Internal Revenue Code.

X was incorporated under the laws of State on D1 and elected to be an S corporation effective D2. Prior to D2, several family groups used limited partnership arrangements to hold stock of X. With the intent of meeting the eligibility requirements of subchapter S, these family groups, consisting of individuals and trusts for the benefit of such individuals (the "Gift Trusts") collectively formed four trusts, Trust 1, Trust 2, Trust 3, and Trust 4 (the "Grantor Trusts"), to hold their respective X stock. On or before D2, the X stock formerly held by various limited partnerships was transferred to the respective Grantor Trusts. Each of these Grantor Trusts then directly held the stock of X.

Because the Grantor Trusts were not wholly owned by individuals, they were not eligible S corporation shareholders. Therefore, X's S corporation election was invalid.

X proposes to amend and restate Trust 1, Trust 2 and Trust 3 to provide that the individual grantors, as well as the individual beneficiaries, of each of the Gift Trust beneficiaries of Trust 1, Trust 2 and Trust 3 will have a power to revoke their portion of their respective Grantor Trust for a period of 60 days. Thereafter, each of Trust 1, Trust 2 and Trust 3 will become irrevocable. Immediately after the revision of Trust 1, Trust 2 and Trust 3, the Gift Trusts will be terminated, thus eliminating the tiered trust structure. After the Gift Trusts are terminated, all beneficiaries and grantors of Trust 1, Trust 2 and Trust 3 will be individuals.

X further represents that Trust 4 has been terminated. This will result in the stock of X being held directly by the Gift Trusts and by a revocable grantor trust that were previously beneficiaries of Trust 4, thus eliminating the tiered trust structure. After Trust 4 is terminated, and after filing proper elections for each of the Gift Trusts, the Gift Trusts will be eligible shareholders of an S corporation.

X represents that the circumstances resulting in the invalid S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1361(a)(1) provides that the term “S corporation” means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides, in part, that the term “small business corporation” means a domestic corporation which is not an ineligible corporation and which does not have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1361(c)(2)(A)(i) provides that, for the purposes of § 1362(b)(1)(B), a trust, all of which is treated (under title 26, subtitle A, chapter 1, subchapter J, part I, subpart E of the United States Code) as owned by an individual who is a citizen or resident of the United States, may be an S corporation shareholder.

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the

ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election was ineffective on D2 because X had ineligible shareholders. We also conclude that the election was inadvertently invalid within the meaning of § 1362(f). Therefore, pursuant to the provisions of § 1362(f), X will be treated as an S corporation from D2 and thereafter, provided that the Gift Trust beneficiaries of Trust 1, Trust 2 and Trust 3 are terminated as described above within 60 days of the date of this letter, and provided that Trust 4 has terminated as described above,.

The shareholders of X must include their pro-rata share of the separately stated and nonseparately computed items of X as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368.

If X or its shareholders fail to treat themselves as described above, this ruling is null and void.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed on whether X was or is otherwise eligible to be treated as an S corporation.

This ruling is directed only to the taxpayer that requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes

cc: